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In the Supreme Court of the United States

OCTOBER TERM 1969

No. 828

JOHN MONTGOMERY, ET AL.,
Appellants,

vs.

ERNESTINE KAISER, ET AL.,
Appellees.

On Appeal from the United States District Court
for the Northern District of California

Motion to Affirm

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the judgment and decree of the District Court be affirmed on the ground that the question raised by Appellants are without substantial merit.

QUESTIONS PRESENTED

1. Does the California maximum grant statute, Welfare and Institutions Code Section 11450(a), violate the equal

protection clause of the Fourteenth Amendment when it operates to deny to nearly half of the families on Aid to Families with Dependant Children the amout of money determined by Appellants to be necessary to meet their minimal needs while allowing other AFDC families an amount to meet their total needs?

STATEMENT OF THE CASE

Appellees, the Plaintiffs below, are members of a class of recipients of the Aid to Families with Dependent Children (hereinafter AFDC) whose basic financial needs, as determined by Appellants, are not met because of the restrictions of the California maximum grant statute Welfare and Institutions Code (hereinafter W&I Code) Section 11450(a) which was held unconstitutional below. Pursuant to statutory mandate of California W&I Code Section 11452,[1] Appellant Montgomery has issued "cost schedules" which list the dollar amounts necessary to achieve "minimum standards of adequate care" for AFDC recipients in California. However, during fiscal years 1967-68 a monthly average of 368,800 AFDC recipients (or approximately 47% of the total) received welfare payments in dollar amounts less than those which had been established as their minimal needs due to the operation of the statute challenged herein. The remaining AFDC recipients, approximately 53% of the total, received their full needs.

Appellees represent those AFDC recipients in California who receive or have received payments in amounts less than their budgeted needs because of the operation of California's maximum grant statute. Their respective circumstances demonstrate the manner in which the statute operates and affects the entire class, as well as how it

1. The text of which is set forth in Appellants' Jurisdictional Statement Appendix B.

affects two sub-classes contained within the entire class. Appellee Kaiser, whose case is typical of the principal class, has four children currently eligible for AFDC and receives for them and herself an amount which is $37 per month (or nearly $450 per year) *less* than the amount which Appellant Montgomery has determined as minimal for all of the family's needs. In an uncontested affidavit Appellee Kaiser pointed out that it would be difficult to support her family on the amount established by the cost schedule but since the amount is substantially less it is impossible. Appellee Kaiser has stated that her children are often deprived of food and clothing.

The remaining Appellees, and the sub-classes they represent, demonstrate more specific patterns of denial caused by the challenged provision. Appellee Williams, a representative of the first sub-class, had the usual needs listed in the cost schedule, and as required by federal law[2] and state regulations[3] was also entitled to an additional AFDC allowance for her work training expenses for child care and transportation. In January, 1968, these amounts totalled $212. Under the maximum limitation set by the W&I Code Section 11450(a), however, Appellee Williams received only $148. She was thus forced to use earnings, which under the Economic Opportunity Act[4] and parallel California regulations[5] were to be exempted as a work incentive, to meet needs which for other more fortunate AFDC families are met by their welfare grants. In some months even those earnings were insufficient and Plaintiff Williams suffered

2. 42 USC Section 602(a)(7)

3. California Public Social Services Manual, Section 44-113.233, et seq.

4. 42 USC Section 2981(a)(1). This provision was subsequently incorporated in modified form into the Social Security Act by 42 USC Section 602(a)(8)(A)(ii).

5. California Public Social Services Manual, Section 44-111.23-24 (effective 7-1-68).

an actual loss because of her efforts to become self supporting through her work training program.

Appellees Crosby, Howard, and Hood represent a second subclass, that of large families. This is the group of persons most severely discriminated against by the maximum grant limitation. Appellee Hood is the mother of eleven children whose monthly needs, according to Appellants' cost schedules, amount to $532. However, the maximum grant payable to a family of this size according to W&I Code Section 11450(a) is only $399 which means that Appellee's family receives $133 *per month* less than the state considers necessary to provide clothing, food, shelter and other essential items. Appellee's Howard family of thirteen children, and Appellee's Crosby's household of ten children suffer similar deprivation.

The case is before this Court on the appeal of John Montgomery, et al., who seek to reverse the decision of the three judge panel, one judge dissenting, which preliminary enjoined enforcement of California's W&I Code Section 11450(a) because it created arbitrary and irrational distinctions among AFDC recipients to the deprivation of these plaintiffs and their class. Appellants applied for and secured a Stay below of the Preliminary Injunction pending decision of this Court.

ARGUMENT

The Three Judge Court Below Correctly Found That the California Maximum Grant Statute Violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The three judge court below, one judge dissenting, correctly determined that California's W&I Code Section 11450(a) violates the equal protection clause of the Fourteenth Amendment of the United States Constitution because it creates arbitrary and irrational classifications

which bare no relationship to the purpose of the statute.[6] In its opinion the court stated:

> "The defendants have not claimed that the lines drawn by Section 11450(a) are rational. Nowhere has the state set forth a plausible explanation why the needs of the one AFDC recipient are fully met, while the needs of another recipient are not. If the purpose of the aid limitations is to reduce state expenditures, there are methods by which the state could accomplish that objective without discriminating among AFDC recipients. The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program. Section 11450(a) consequently denies to the burdened class of AFDC recipients equal protections of the laws and is therefore unconstitutional. ... ."[7]

It is well settled that the equal protection clause forbids arbitrary classifications by state statutes and requires that any state statutory discriminations be based on differences reasonably related to the purpose of the act. *Gulf, Colorado & Santa Fe Ry v. Ellis,* 165 U.S. 150 (1896); *F. S. Royster Guano Co. v. Virginia,* 253 U.S. 412 (1920); *Morey v. Douds,* 354 U.S. 457 (1957); *McLaughlin v. Florida,* 379 U.S. 184 (1964). Moreover, where a fundamental right, as in this

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6. The court also correctly perceived that the California statutory increment of $6.00 per child did not distinguish the California statute from those provisions elsewhere which impose absolute ceilings on the amount of aid to a family since:

> "The minimal $6 increment does not close the gap between child need as calculated by defendant Montgomery and actual aid for large family children, while children from smaller families may receive sufficient aid to cover their calculated needs." Cf. Page 8, Appendix A, Appellants' Jurisdictional Statement.

7. Cf. Page 7, Appendix A, Appellants' Jurisdictional Statement.

case—the right of survival, is asserted, the proper standard to be used in determining whether a state statute violates the equal protection clause is that of "close scrutiny." *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966); *Skinner v. Oklahoma,* 316 U.S. 535 (1942).

Appellants concede that the purpose of the AFDC program is to furnish financial assistance to needy dependant children and their families "to help maintain and strengthen family life and to help such parents or relatives to obtain or retain capability for the maximum self support and personal independance" 42 USC Section 601.[8] Under this mandate, and pursuant to State Law W&I Code Section 11452, Appellant Montgomery adopted cost schedules in which he determined the minimum needs of family units for vital items such as food, shelter, clothing, transportation, etc., and in which he quite reasonably determined that these needs vary according to the number, age, sex, and county of residence of the members of the recipient family.

However, actual payments to AFDC recipients do not vary according to these factors. The statute in question limits the amount that an AFDC family may receive solely on the basis of the number of children in the family and drastically decreases the permissible allotment per child as the family size increases.[9] Thus an extra $49 per month is allowed by the maximum grant statute to meet food, clothing, and other needs for the third child of a family, while only $6 per month is allowed to meet the same need for the tenth child.[10] In other words, a child in a large

8. The parallel state provision is California W&I Code Section 11205.

9. Cf. chart at Page 3, Appellants' Jurisdictional Statement.

10. It should also be noted the $6 monthly allowance alloted for all needs is less than one-third of the amount Appellants' schedule as necessary for food alone ($19.10 per month).

family would benefit economically if he were removed from his family and placed in one of smaller size—despite the express statutory purpose that payments strengthen family life.

Less blatant but equally invidious consequences occur in those California families of all sizes which are affected by the maximum grant. Every such family is deprived of some essentials of life while other AFDC families are given funds to meet their needs. Appellant Montgomery admits that statistically 47% of the AFDC recipients in California are discriminated against by the challenged statute while the remainder of the AFDC recipients have their full needs met. When faced with the uncontested facts, the lower court of necessity found that there were no rational bases for the discrimination which results from operation of the California maximum grant statute, and that the statute was therefore unconstitutional.

The Points Presented on Appeal by Appellants Are Not Substantial and Do Not Warrant Argument Before This Court.

Appellants argue that the discrimination inherent in the maximum grant statute is justified by the need of the State to preserve funds. This argument has repeatedly been rejected by this Court. "The saving of welfare costs cannot be an independant ground for an invidious classification." *Shapiro v. Thompson*, 394 U.S. 618 (1969). Even when conservation of public funds is a statute's primary purpose, such a statute may not discriminate arbitrarily. *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Green v. Dept. of Public Welfare*, 270 F. Supp 173 (D. Del. 1967).

Appellants' contention that the statute provides the same maximum grant limit for each family of the same size is, of course, true, but entirely beside the point. The classification which Plaintiffs contend is arbitrary and irrational

is that created between families of different sizes. Appellants have made no attempt whatsoever to justify this discrimination. Equally irrelevant is Appellants' contention that the state need not guarantee that each family will receive the amount of its state estimated needs. Appellees have not raised that contention in this case. The point contested below is the inequitable distribution of payments which are made in a fashion which permits some families to receive their state determined needs while others do not. Appellees have asked, and the three judge panel has ordered, only that all families be treated equally.

A further claim of Appellants that the maximum grant limitations are rational because "there must be some incentive for welfare recipients to seek employment." (Jurisdictional Statement, Page 10) is equally without merit. The California maximum grant does not operate to limit funds only where there is an employable person in the family to whom an inducement to seek employment might be relevant. It affects employables and unemployables alike —consequently the work incentive rationale must be summarily dismissed as making the statute invalid for overreaching. However, more significantly, there are many provisions in the federal and California statutes relating to public assistance which specifically provide work incentives for employable persons who are receiving aid including, for example, those provisions which the maximum grant actually thwarted as a work incentive in the case of Appellee Williams. W&I Code Section 11450(a) is in no way rationally related to these statutory schemes and work incentive policies.

CONCLUSION

In conclusion, Appellants have raised no substantial questions which warrant further argument of this case. We respectfully submit that the judgment and decrees of the three judge panel, one judge dissenting, should be affirmed. Because a Stay of the Preliminary Injunction has been granted by the three judge court and the Appellees are suffering irreparable injury by the continued operation of the statute in question, Appellees respectfully request that this motion to affirm be speedily granted.

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